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SUBJECT: PRESIDENT'S BROTHER INVOLVED IN PUBLIC CONTRACTING CONTROVERSY

¶1. (U) Summary: An Ecuadorian newspaper story on June 14 denounced President Correa's brother Fabricio for alleged corruption in public contracting, claiming he received $80 million worth of government contracts through shell companies based in Panama and other suspicious business dealings. President Correa responded by issuing a decree prohibiting public contracting with companies domiciled in "tax haven" countries (including Panama, Hong Kong, and numerous Caribbean countries) or firms with shareholders in these countries. End Summary.

¶2. (U) On June 14, Diario Expreso, a Guayaquil newspaper, published a scathing article denouncing President Correa's brother, Fabricio Correa, for alleged corruption in public contracting. The report alleged that a conglomerate of offshore businesses headed by Fabricio obtained contracts with public entities worth over $80 million. The report implied that he used nepotism to obtain the contracts, and that his companies were located offshore to conceal shady business dealings.

¶3. (U) Fabricio Correa conceded that his companies had secured major contracts in the oil and hydroelectric sectors with public institutions, but claimed the contracts were awarded based on his years of experience. A government procurement law passed in 2008 forbid relatives of senior government officials from obtaining public contracts. However, Fabricio claimed that the law's implementing regulation (passed in May 2009 by a presidential decree) only specified that contractors could not be related to the heads of the agencies signing the contracts, and therefore, his relation to President Correa would not count as nepotism.

¶4. (U) President Correa reacted initially by claiming the press was attacking his family. He challenged Expreso to demonstrate any irregularities, favoritism, or injury to the government in the awarding of Fabricio's contracts. However, he also asked the Comptroller General and the National Assembly to investigate the cases, certain they would find no wrongdoing. Several days later, in his June 20 radio address, he admitted that he recognized that Fabricio Correa's companies in Panama were "foreign shell companies," and signed Executive Decree 1793, prohibiting public contracting with firms in "tax haven" countries such as Panama.

Decree 1793 - More Restrictions on Public Contracting

¶5. (U) The decree specifically prohibits public sector contracting with companies domiciled in any countries Ecuador's SRI (tax authority) has listed as "tax havens," and with any companies that have shareholders domiciled in the tax haven countries. Eighty-nine countries are designated as tax havens by the SRI, including Caribbean islands such as the Cayman Islands and the Bahamas, but also Hong Kong, Panama, Uruguay, Liechtenstein, and Monaco. It notes that companies with public contracts must obtain approval from the GOE before transferring 25% or more of the firm's capital (in the past, it appears only oil companies were subject to this

requirement). Companies with public contracts must notify the GOE of all shareholders, associates, and participants in the company and their locations, as well as any changes in this structure. According to the director of Ecuador's Public Contracting Institute, if companies with government contracts were determined to be domiciled in SRI tax haven countries (or have shareholders in such companies), they would have to transfer their shares to companies based in other countries or their contracts could be subject to unilateral termination.

¶6. (SBU) Legal opinion has been critical of the decree. One legal source says that the tax haven rule and the requirement for GOE approval before transferring company shares contradict the Companies Law's provision for freedom of capital movement for corporate entities. Countries on the "tax haven" list have also reacted negatively to the move. The government of Panama announced that it would implement a reciprocity law to prevent granting public contracts to Ecuadorian companies (which could exclude Ecuadorian companies from work on the upcoming expansion of the Panama Canal), and hinted at other retaliation that could include limiting canal usage. Three members of ALBA, the Chavez-led political group which Ecuador recently joined, are also on the list.

¶7. (SBU) Meanwhile, the Comptroller General and the National Assembly have moved forward with their investigations. On June 24, Alfredo Vera, Ecuador's Transparency Secretary, requested that the Ministries of Housing, Transport, and Public Works, and state oil company Petroecuador annul Fabricio Correa's contracts. However, when interviewed about the request, the heads of these entities said that they would not take any action until they received an official request. While some question the ethics of the President's brother

obtaining numerous government contracts and having offshore companies, it does not appear that he has broken any existing laws. In fact, Fabricio announced on June 29 that he planned to transition his companies to Ecuadorian ownership to comply with the new decree and to maintain his government contracts. President Correa's concerns are twofold. First, the offshore "shell companies," which are out of his government's jurisdiction and control. They are also likely not paying taxes within Ecuador, a lack of potential revenue that the cash-strapped GOE could use. Second, Fabricio Correa's contracts, while so far apparently legal, do raise questions of nepotism, particularly in light of widespread business community assertions that Fabricio is corrupt. For President Correa, who brandishes his honesty, this is potentially a heavy political cost.

Press Angle

¶8. (SBU) One additional piece of this puzzle is the press, which Correa has repeatedly criticized. The newspaper that published the initial story about Fabricio claimed it was not doing so to get back at the President for fining television channel Teleamazonas, but others disagree. Correa's decree in turn could be partially targeted at the press. One legal expert told us that 7 out of 8 major dailies in Ecuador are owned by companies or have shareholders in "tax haven" countries such as Panama. Correa has hinted that government advertising in newspapers could be considered public contracting, and could be prohibited for papers with such ownership structures.

¶9. (SBU) Comment: President Correa's decision to issue Decree 1793 in face of the controversy surrounding his brother's government contracts was taken hurriedly, and may end up being revised. A blanket restriction limiting public contracting with companies that have shareholders in certain countries seems excessive, difficult to implement, and likely to bring retaliation, as threatened by Panama. The move likely reflects Correa's frustration with his inability to control offshore companies. Based on private conversations with contacts at INCOP, it appears unlikely that Fabricio has broken any existing laws or that his contracts will be terminated following the investigations. However, the controversy could have implications for Correa's image, since it gives at least the appearance of favoritism at the highest levels of an administration that has prided itself on fighting corruption.

HODGES